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ARTICLE VI

CONTRACTING PROVISIONS

6.1. The U.S. DoD (acting through the Department of the Navy) shall be responsible for Contracting for this Project on behalf of both Parties in accordance with U.S. Contracting laws, regulations and procedures. The Contracting Officer is the exclusive source for providing contractual direction and instructions to Contractors.

6.2. The PL, with the assistance of the NDPLs, shall be responsible for the coordination of activities relating to the Project, and shall cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The PL, with the assistance of the NDPLs, shall review statements of work prior to the development of solicitations to insure that they are in accordance with this Agreement. In addition, the Contracting Officer shall keep the PL advised of all financial arrangements with the prime Contractor. The PL shall inform the Italian NDPL of the status of ongoing and planned Contracting actions.

6.3. The Contracting Officer shall negotiate to obtain the rights to use and disclose Project Information required by Article IX (Disclosure and Use of Project Information). The Contracting Officer shall insert into prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article IX (Disclosure and Use of Project Information), Article X (Controlled Unclassified Information), Article XII (Security) and Article XIII (Third Party Sales and Transfers) and Article XIX (Amendment, Termination, Entry into Force, and Duration), including suitable provisions to ensure compliance with the Parties' export control laws and regulations. During the Contracting process, the Contracting Officer shall advise prospective Contractors of their responsibility to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use. The Contracting Officer shall also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

6.4. In the event the Contracting Officer is unable to secure adequate rights to use and disclose Project Information as required by Article IX (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter shall be referred to the SC for resolution.

6.5. The transfer of export-controlled information furnished by one Party shall be authorized by the government of the furnishing Party only to those Contractors of the other Party who shall limit the end use of the Information received for the purposes authorized in Article IX (Disclosure and Use of Project Information) of this Agreement. The Parties shall establish legal arrangements with their Contractors to ensure that their Contractors do not retransfer or otherwise use export controlled information for any purpose other than authorized in Article IX (Disclosure and Use of Project Information) of this Agreement. Such legal arrangements shall also provide that the Contractor shall not re-transfer the export-controlled information to a subcontractor without the consent of the government of the furnishing Party and unless the subcontractor has been legally bound to limit use of the information to the purposes authorized in Article IX (Disclosure and Use of Project Information).

6.6. The Contracting Officer shall immediately advise the PL of any cost growth, schedule change, or performance problems of any Contractor for which the Contracting Officer is responsible.

6.7. Upon agreement, consistent with Article II (Objectives) a Party may contract for the unique national requirements of the other Party.

ARTICLE VII

WORK SHARING

7.1. Each Party shall encourage its Contractors to provide competitive opportunities to sources from the other nation to participate in the work of the Project, provided that such participation does not adversely impact the Project, and that such opportunities are consistent with high technical merit, reasonable cost, and the need to achieve the timely, economical, and efficient execution of the Project.

7.2. No requirement shall be imposed by either Party for work sharing or other industrial or commercial compensation in connection with this Agreement that is not in accordance with this Agreement.

ARTICLE VIII

PROJECT EQUIPMENT

8.1. Each Party may provide Project Equipment identified as being necessary for executing the Agreement to the other Party. Project Equipment shall remain the property of the providing Party. A list of all Project Equipment provided by one Party to another Party shall be developed and maintained by the PL, approved by the SC, and shall be incorporated into Annex B (Projected Inventory of Project Equipment Exchanges) in accordance with Article IV (Management) prior to such transfers.

8.2. The receiving Party shall maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Party has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Party, the receiving Party shall return the Project Equipment to the providing Party in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Party shall return the Project Equipment to the providing Party (unless otherwise specified in writing by the providing Party) and pay the replacement value specified in Annex B (Projected Inventory of Project Equipment Exchanges), which shall be computed pursuant to the providing Party's national laws and regulations. If the Project Equipment is lost while in the custody of the receiving Party, the receiving Party shall issue a certificate of loss to the providing Party and pay the replacement value specified in Annex B (Projected Inventory of Project Equipment Exchanges).

8.3. The providing Party shall deliver Project Equipment to the receiving Party at a mutually agreed location and time. Possession of the Project Equipment shall pass from the providing Party to the receiving Party at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Party.

8.4. All Project Equipment that is transferred shall be used by the receiving Party only for the purposes of carrying out this Agreement, unless otherwise consented to in writing by the providing Party. In addition, in accordance with Article XIII (Third Party Sales and Transfers) Project Equipment shall not be

re-transferred to a Third Party without the prior written consent of the providing Party.

8.5. Project Equipment transferred to one Party under this Agreement shall be returned to the providing Party prior to the termination or expiration of this Agreement.

8.6. Any Project Equipment which is jointly acquired on behalf of both Parties for use under this Agreement shall be disposed of during this Project or when the Project ceases as agreed by the SC.

8.7. Disposal of jointly acquired equipment may include a transfer of the interest of one Party in such Project Equipment to the other Party, or the sale of such equipment to a Third Party in accordance with Article XIII (Third Party Sales and Transfers) of this Agreement. The Parties shall share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under this Agreement.

ARTICLE IX

DISCLOSURE AND USE OF PROJECT INFORMATION

9.1. General

Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Project. The Parties intend to acquire sufficient Project Information and rights to use such information to enable the development of the AGM-88E AARGM. The nature and amount of Project Information to be acquired shall be consistent with the objectives stated in Article II (Objectives), Article III (Scope of Work) and Article VI (Contracting Provisions). Transfer of such Information to Contractors shall be consistent with each Party's applicable export control laws and regulations.

9.2. Government Project Foreground Information

9.2.1. Disclosure: Project Foreground Information generated by a Party's military or civilian employees shall be disclosed without charge to both Parties.

9.2.2. Use: Each Party may use all Government Project Foreground Information without charge for Defense Purposes. The Party generating Government Project Foreground Information shall also retain its rights of use thereto. Any sale or other transfer to a Third Party, shall be subject to the provisions of Article XIII (Third Party Sales and Transfers) of this Agreement.

9.3. Government Project Background Information

9.3.1. Disclosure: Each Party, upon request, shall disclose to the other Party any relevant Government Project Background Information generated by its military or civilian employees, provided that:

9.3.1.1. such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information

determining whether it is "necessary to" or "useful in" the Project;

- 9.3.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights;
- 9.3.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party, and
- 9.3.1.4. any disclosure or transfer of such Government Project Background Information to Contractors is in accordance with the Government of the furnishing Party's export control laws and regulations.

9.3.2. Use: Government Project Background Information disclosed by one Party to the other may be used without charge by the other Party for Project Purposes only; however, the furnishing Party shall retain all its rights with respect to such Project Background Information.

9.4. Contractor Project Foreground Information

- 9.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors, shall be disclosed without charge to both Parties.
- 9.4.2. Use: Each Party may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Party. The Party whose Contractors generate and deliver Contractor Project Foreground Information shall also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information, shall be subject to the provisions of Article XIII (Third Party Sales and Transfers) of this Agreement.

9.5. Contractor Project Background Information

- 9.5.1. Disclosure: Any Project Background Information, (including information subject to proprietary

rights) generated and delivered by Contractors shall be made available to the other Party provided the following conditions are met:

- 9.5.1.1. such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the Project;
 - 9.5.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights;
 - 9.5.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party, and
 - 9.5.1.4. any disclosure or transfer of such Contractor Project Background Information to Contractors is in accordance with the Government of the furnishing Party's export control laws and regulations.
- 9.5.2. Use: Project Background Information furnished by one Party's Contractors and disclosed to the other Party may be used without charge by the other Party for Project Purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Party shall retain all its rights with respect to such Project Background Information.

9.6. Alternative Uses of Project Information

- 9.6.1. Any Project Background Information provided by one Party shall be used by the other Party only for the purposes set forth in this Agreement, unless otherwise consented to in writing by the providing Party.
- 9.6.2. The prior written consent of the U.S. DoD shall be required for the use of Project Foreground Information by the Italian MOD for purposes other than those provided for in this Agreement.

9.7. Proprietary Project Information

- 9.7.1. All Project Information subject to proprietary interests shall be identified and marked, and it shall be handled as Controlled Unclassified Information.
- 9.7.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on 1 January 1971, shall apply to proprietary Project Information related to this Agreement.

9.8. Patents

- 9.8.1. A Contracting Party shall include in its Contracts a provision governing the disposition of rights in regard to Project Inventions, and the related Patent rights, which either:
 - 9.8.1.1. provides that the Party shall hold title to all Project Inventions together with the right to make a Patent application for the same, free of encumbrance from the Contractor; or
 - 9.8.1.2. provides that the Contractor shall hold title (or may elect to retain title) for Project Inventions together with the right to make Patent applications for the same, while securing for the Party a license for the Project Inventions, and any Patents therefore, on terms in compliance with the provisions of paragraph 9.8.2 below.
- 9.8.2. In the event that a Contractor holds title (or elects to retain title) for a Project Invention, the Contracting Party shall secure for the Parties non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.

- 9.8.3. The provisions of sub-paragraphs 9.8.4 through 9.8.8 below shall apply in regard to Patent rights for all Project Inventions made by a Party's military or civilian employees, including those within Government-owned facilities, and for all Project Inventions made by Contractors for which the contracting Party holds title or is entitled to acquire title.
- 9.8.4. Where a Party has or can secure the right to file a Patent application with regard to a Project Invention, that Party shall consult the other Party regarding the filing of such Patent application. The Party having such rights shall in other countries, file, cause to be filed, or provide the other Party with the opportunity to file on behalf of the Party holding such rights, or its Contractors, as appropriate, Patent applications covering any such Project Invention. If a Party having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Party shall notify the other Party of that decision and permit the other Party to continue the prosecution.
- 9.8.5. Each Party shall be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 9.8.6. Each Party shall grant to the other Party a non-exclusive, irrevocable, royalty-free license under its Patents for Project Inventions, to practice or have practiced the Patent Project Invention for Defense Purposes throughout the world.
- 9.8.7. Patent applications to be filed under this Agreement that contain Classified Information, shall be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.

9.8.8 Each Party shall notify the other Party of any Patent infringement claims made in its territory arising in the course of work performed under the Project. Insofar as possible, the other Party shall provide information available to it that may assist in defending the claim. Each Party shall be responsible for handling all Patent infringement claims made in its territory, and shall consult with the other Party during the handling, and prior to any settlement, of such claims. The Parties shall share the costs of resolving Patent infringement claims in the same percentage as they share the full Financial Costs and Non-financial Costs of the Project. The Parties shall, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Project of any invention covered by a Patent issued by their respective countries.

ARTICLE X

CONTROLLED UNCLASSIFIED INFORMATION

10.1. Except as otherwise provided in this Agreement or as authorized in writing by the originating Party, Controlled Unclassified Information provided or generated pursuant to this Agreement shall be controlled as follows:

- 10.1.1. Such information shall be used only for the purposes authorized for use of Project Information as specified in Article IX (Disclosure and Use of Project Information).
- 10.1.2. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1., and shall be subject to the provisions of Article XIII (Third Party Sales and Transfers).
- 10.1.3. Each Party shall take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2., unless the originating Party consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification shall be given to the originating Party.

10.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked to ensure its "in confidence" nature. U.S. export-controlled information shall be marked as "International Traffic in Arms Regulation (ITAR)-Controlled". Italian export-controlled information shall be marked as "Nuove Norme sul Controllo dell' Esportazione, Importazione e Transito dei Materiali di Armamento". The Parties shall decide, in advance and in writing, on the markings to be placed on any other types of Controlled Unclassified Information. The appropriate markings for all Controlled Unclassified Information shall be reflected in the Project Security Instruction.

10.3. Controlled Unclassified Information provided or generated pursuant to this Agreement shall be handled in a manner that ensures control as provided for in paragraph 10.1.

10.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall ensure the Contractors are legally bound to control such information in accordance with the provisions of this Article.

ARTICLE XI

VISITS TO ESTABLISHMENTS

11.1. Each Party shall permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Party or by employees of the other Party's Contractor(s), provided that the visit is authorized by both Parties and the employees have any necessary and appropriate security clearances and a need-to-know.

11.2. All visiting personnel shall be required to comply with security regulations of the hosting Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

11.3. Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform with the established visit procedures of the host country. Requests for visits shall bear the name of the Project.

11.4. Lists of personnel of each Party required to visit, on a continuing basis, facilities of the other Party shall be submitted through official channels in accordance with recurring international visit procedures.

ARTICLE XII

SECURITY

12.1. All Classified Information provided or generated pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded in accordance with the General Security of Information Agreement between Italy and the United States of America, dated 4 August 1964, amended 2 September 1982, and including the Industrial Security Annex thereto, of 27 November 1985, amended 27 January 1988.

12.2. Classified Information shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such Classified Information shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

12.3. Each Party shall take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this Agreement is protected from further disclosure, except as permitted by paragraph 12.8., unless the other Party consents to such disclosure. Accordingly, each Party shall ensure that:

12.3.1. The recipient shall not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Party in accordance with the procedures set forth in Article XIII (Third Party Sales and Transfers).

12.3.2. The recipient shall not use the Classified Information for other than the purposes provided for in this Agreement.

12.3.3. The recipient shall comply with any distribution and access restrictions on information that is provided under this Agreement.

12.4. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this Agreement has

been lost or disclosed to unauthorized persons. Each Party also shall promptly and fully inform the other Party of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

12.5. The PL shall prepare a Project Security Instruction (PSI) and a Classification Guide (CG) for the Project. The PSI and the CG shall describe the methods by which Project Information shall be classified, marked, used, transmitted, and safeguarded and shall require that markings for all export-controlled Classified Information shall include the applicable export control markings identified in paragraph 10.2 of Article X (Controlled Unclassified Information). The PSI and CG shall be developed by the PL for submission to the SC for the SC to seek approval within three months after this Agreement enters into force. They shall be reviewed and forwarded to the Parties' DSAs for approval and shall be applicable to all government and Contractor personnel participating in the Project. The CG shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG shall be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

12.6. The DSA of the Party in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or Subcontractor of any Classified Information received under this Agreement, the DSAs will:

- 12.6.1. Ensure that such Contractor, prospective Contractor or subcontractor and their facility(ies) have the capability to protect the Classified Information adequately.
- 12.6.2. Grant a security clearance to the facility(ies), if appropriate.
- 12.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.
- 12.6.4. Ensure that all persons having access to the Classified Information are informed of their

responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this Agreement.

12.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

12.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the Agreement.

12.7. In accordance with the provisions of paragraph 12.1., Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this Agreement only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party shall not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Party shall be consulted for approval prior to permitting such access.

12.8. For any facility wherein Classified Information is to be used, the responsible Party or Contractor shall approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information pertaining to this Agreement. These officials shall be responsible for limiting access to Classified Information involved in this Agreement to those persons who have been properly approved for access and have a need-to-know.

12.9. Each Party shall ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Project.

12.10. Information provided or generated pursuant to this Agreement may be classified as high as Secret. The existence of this Agreement is Unclassified and the contents are Unclassified.

ARTICLE XIII

THIRD PARTY SALES AND TRANSFERS

13.1. In recognition of the financial and non-financial contributions by the Parties reflected in Article V of this Agreement, the U.S. DoD shall retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project Foreground Information to Third Parties. The U.S. DoD shall inform the Italian MOD prior to any such sale, transfer, or disclosure.

13.2. The Italian MOD shall not sell, transfer title to, disclose, or transfer possession of Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) or jointly acquired or produced Project Equipment to any Third Party without the prior written consent of the U.S. Government. Furthermore, the Italian MOD shall not permit any such sale, disclosure, or transfer by others, including the owner of the item, without the prior written consent of the U.S. Government. The Italian MOD recognizes that such sales, disclosures, or other transfers shall not be authorized by the U.S. Government unless the government of the intended recipient agrees in writing with the U.S. DoD that it shall:

13.2.1. not retransfer, or permit the further retransfer of, any equipment or information provided; and

13.2.2. use, or permit the use of, the equipment or information provided only for the purposes specified by the Parties.

13.3. A Party shall not sell, transfer title to, disclose, or transfer possession of Project Background Information or Project Equipment provided by the other Party to any Third Party without the prior written consent of the Government of the Party which provided such equipment or information. The providing Party's Government shall be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

ARTICLE XIV

LIABILITY AND CLAIMS

14.1. Claims against either Party or its personnel shall be dealt with in accordance with the terms of Article VIII of the NATO Status of Forces Agreement (NATO SOFA) dated 19 June 1951. Civilian employees of the Parties assigned to duty within their government's Defense Department or Ministry shall be deemed for the purpose of Article VIII of NATO SOFA to be members of a civilian component within the meaning of Article I of NATO SOFA while present in the territory of the other Party for the purpose of this Agreement. However, claims for loss of or damage to Project Equipment provided under Article VIII (Project Equipment) shall be dealt with in accordance with paragraph 8.2.

14.2. Claims arising under or related to any Contract awarded pursuant to Article VI (Contracting Provisions) shall be resolved in accordance with the provisions of the Contract.

14.3. Employees and agents of Contractors shall not be considered to be civilian personnel employed by a Party for the purpose of paragraph 14.1.